IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

OP.No. 34485 of 2002(E)

PETITIONER:

P.S.DEVASSIA S/O. SOURIAR,
AGED 51 YEARS, UPPER DIVISION CLERK,
(COMPULSORILY RETIRED), GOVERNMENT HIGHER SECONDARY SCHOOL, BIG BAZAAR, PALAKKAD AND RESIDING AT 'PUTARI' VENNAKARA, PALAKKAD -4.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

3. **THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.**

4. **THE ADDITIONAL SECRETARY TO THE GOVERNMENT, VIGILANCE (B) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

5. **THE VIGILANCE TRIBUNAL, KOZHIKODE, REPRESENTED BY THE MANAGER.**

BY GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.58285/2002 IN OP. NO.34485/2002

DISMISSED

12.07.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.A5/35178/93 DT. 23.5.95 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P2:- COPY OF THE MEMO OF CHARGES NO.1052/B1/96/VIG. DT. 15.2.97.

EXT.P3:- COPY OF THE ARGUMENT NOTE SUBMITTED ON BEHALF OF THE PETITIONER.

EXT.P4:- SHOW CAUSE NOTICE NO.9542/B1/99/VIG. DT. 16.6.2000.

EXT.P5:- REPORT DT. 8.9.99 IN E.C. 5/97.

EXT.P6:- REPRESENTATION DT. 11.1.01.

EXT.P7:- G.O.(RT) NO.90/02/VIG. DT. 18 .5.02.

/TRUE COPY/

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Thottathil B. Radhakrishnan, J.

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O.P.No.34485 of 2002

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Dated this the 12th day of July, 2007.

JUDGMENT

Petitioner, then an Upper Division Clerk and bound by the provisions of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, hereinafter referred to as "CC & A" Rules, and the Kerala Government Servant's (Conduct) Rules, 1960, hereinafter referred to as the "Conduct Rules", was issued Ext.P1 show cause notice levelling specific allegations against him of having connived with one Sri.K.C.Krishnan and deriving monetary advantage on the promise of extending help for Smt.Valsala, W/o.Sri.Sahadevan to obtain an employment. The finalisation of the transaction in relation to the promised amounts are alleged to have been hatched in the presence of the wife of the petitioner. Strangely, he did not file any reply to the memo of charges. The Government referred the case for consideration of the Vigilance Tribunal for proceedings under the CC&A Rules. Even before the Tribunal, the petitioner did

not place any written statement of his defence in spite of the fact that the proceedings were under the CC&A Rules and was not a criminal case. Witnesses were examined in support of their charges. The aforesaid Smt.Valsala gave evidence. At the end of that exercise, the petitioner did not chose even to offer any evidence, either through himself or through anyone else. After the proceedings were closed by the Vigilance Tribunal reserving its report to be forwarded to the Government, Ext.P3 notes of arguments were submitted. The Tribunal, on the basis of the materials on record, concluded the proceedings by upholding the charges. On receipt of Ext.P5 report of the Tribunal, show cause notice was issued on 16-6-2000. Petitioner was heard thereafter also by the Government, including on the basis of Ext.P6 written submissions made by him. The Government thereafter examined the records and concluded that the explanation of the petitioner was unsatisfactory and with the advice of the Public Service Commission confirmed its provisional decision to compulsorily retire the petitioner from service.

2. In support of the writ petition, it is argued that this is a case of no evidence and the Vigilance Tribunal committed a jurisdictional error in concluding the enquiry against the petitioner. It is also the case of the petitioner that he belongs to the Education Department in Government and the Additional Secretary in the Vigilance Department had no authority to issue the impugned Ext.P7. It is further urged that had the decision to compulsorily retire the petitioner been taken by the disciplinary authority, he would have had a right of appeal to the Government and that has also been deprived by the Additional Secretary to Government issuing Ext.P7. Learned counsel for the petitioner made copious reference to the depositions before the Tribunal in an attempt to show that the aforesaid Smt.Valsala had not really spoke much against the petitioner. It was also argued that no proceedings having been taken against Sri.Krishnan, there is no reason why the petitioner ought not to have been exonerated.

3. The disciplinary authority, in relation to the petitioner, would have been the Director of Public Instructions. This does not mean that the Government is incapacitated in issuing the order of punishment. The deprivation of a right of appeal is no ground to exclude the Government's authority to take action in the case in hand. Under such circumstances, the petitioner had a remedy open to him by way of recourse to Rule 35 of CC & A Rules for review of the orders of the Government. Therefore, the contention raised in that regard fails.

4. Another contention of the petitioner is that Ext.P7 is issued by the Additional Secretary to Government in the Vigilance Department whereas the petitioner belongs to Education Department. It is an executive order of the Government, which has been expressed to be under the order of the Governor, and such executive decision, though signed by the Additional Secretary in the Vigilance Department, is

essentially a Governmental decision. It was not as if the Additional Secretary was exercising his authority and issuing an order by himself. Therefore, the contention that the Additional Secretary in the Vigilance Department could not have signed Ext.P7 does not stand. That is rejected.

5. The allegations, as already noticed, involve the privy between Sri.Krishnan and the petitioner and the conspiracy to accept illegal gratification for using the good offices of the petitioner to obtain employment for Smt.Valsala is a matter reflected by the memo of charges. The petitioner was a UD clerk while Sri.Krishnan was a peon. Even the memo of charges states that the negotiations of the transaction were held in the presence of the wife of the petitioner. The mere fact that the Government did not proceed against Sri.Krishnan is no reason to strike off the proceedings against the petitioner.

6. As regards the quality of findings qua the

materials on record, it has to be remembered that before the presentation of Ext.P3 notes of arguments, there was no defence statement placed either to the memo of charges or before the Vigilance Tribunal. Petitioner, the accused officer, did not show the courage of either being examined or to examine some other witness in support of his case. The evidence, as a whole, was assessed by the Tribunal and it was concluded that the petitioner is guilty of the charges. The quality of appreciation of evidence in such matters does not require the charge to be proved as if it is in a criminal case. On a preponderance of probability, as is required in a domestic enquiry, it was fairly well established that the petitioner had committed the misconduct alleged against him though it may be a case where a connecting link of the money received by Sri.Krishnan being passed on to the petitioner would not have been proved. Such material is of no consequence because the money allegedly entrusted to Sri.Krishnan to be passed on to the petitioner was only a portion of the money involved. In the absence of any

defence version or defence evidence, I find no legal infirmity or jurisdictional error in the findings of the Vigilance Tribunal.

7. It is a matter of record that a case against the petitioner for offence punishable under Section 138 of the Negotiable Instruments Act resulted in trial and conviction at the hands of the Judicial Magistrate and in the course of those proceedings, that court had noticed that the allegations forming the foundation of that case tends also to disclose offences punishable under the Prevention of Corruption Act, 1988 and accordingly, under orders of the Judicial Magistrate, proceedings were brought to the attention of the Enquiry Commissioner and Special Judge, which ultimately resulted in the conviction of the petitioner. It is stated that as against the conviction under the N.I.Act, a criminal revision and, as against that under the P.C.Act, a criminal appeal, are pending against this Court.

8. With the materials on record, it seems that it is a lenient approach on the part of the Government to impose on the petitioner only the punishment of compulsory retirement. Under such circumstances, I do not find that the punishment imposed on the petitioner is grossly disproportionate to the proved charges.

In the result, the writ petition fails. The same is dismissed. No costs.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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O.P.No.34485 of 2002

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JUDGMENT

Dated:12-7-2007